

PART 6 – APPLICATIONS AND REVIEW PROCEDURES

Chapter 1 – Approval and Appeal Authorities

Section 6-101 Summary Decision Matrix

Chapter 2 – Application Submittal and Review

Section 6-201 Initiation and Withdrawal of Application
Section 6-202 Application Submittal
Section 6-203 Application Acceptance
Section 6-204 Administrative Application Review Procedures
Section 6-205 Public Meeting Application Review Procedures
Section 6-206 Public Hearing Application Review Procedures
Section 6-207 Legislative Review

Chapter 3 – Applications

Section 6-301 Code Interpretations and Similar Use Rulings
Section 6-302 General Plan Amendment
Section 6-303 Specific Plan
Section 6-304 Zoning Map Amendments and Code Text Amendments
Section 6-305 Planned Area Development (PAD) Overlay Districts
Section 6-306 Development Plan Review
Section 6-307 Subdivisions, Lot Splits and Adjustments
Section 6-308 Use Permit
Section 6-309 Variances
Section 6-310 Abatement
Section 6-311 Shared Parking
Section 6-312 Modify Approved Plan, PAD Overlay, Use Permit
 or Condition of Approval
Section 6-313 Security Plan

Chapter 4 – Public Notices and Staff Reports

Section 6-401 General Provisions
Section 6-402 Neighborhood Meetings
Section 6-403 Notice for Public Meetings
Section 6-404 Notice for Public Hearings
Section 6-405 Notice of Appeals
Section 6-406 Staff Reports

Chapter 5 – Public Meetings and Public Hearings

Section 6-501	Purpose
Section 6-502	Rules of Procedure
Section 6-503	Record

Chapter 6 – Conditions of Approval

Section 6-601	Conditions of Approval
Section 6-602	Contract for Conditions
Section 6-603	Time Limits on Conditions
Section 6-604	Failure to Fulfill Previous Conditions
Section 6-605	Modification or Removal of Conditions

Chapter 7 – Re-Application and Reconsideration of Decisions

Section 6-701	Re-Application
Section 6-702	Reconsideration as Extraordinary Remedy
Section 6-703	Motion for Reconsideration
Section 6-704	Motion for Reconsideration and Appeal Period
Section 6-705	Process for Reconsideration
Section 6-706	Reconsideration and Appeals
Section 6-707	Reconsideration Limit

Chapter 8 – Appeals

Section 6-801	Purpose
Section 6-802	Parties to an Appeal
Section 6-803	Appeal Criteria

Chapter 9 – Time Extension, Revocation, and Transfer of Permits/Approvals

Section 6-901	Time Extension
Section 6-902	Revocation of a Permit/Approval
Section 6-903	Transfer of Permits/Approvals

CHAPTER 1 – APPROVAL AND APPEAL AUTHORITIES

Section 6-101 Summary Decision Matrix.

The following table describes the decision-making authority and the appeal authority for the approvals that may be granted under this Code. Where more than one body may be the decision or appeal body for a specific type of approval, the Development Services Manager is responsible for determining the applicable decision or appeal body.

Table 6-101A – Applications by Decision Body and Type of Procedure¹

Type of Procedure:	Decision Body:	DS MGR	ZA	ORIGINAL	HO	BA	DRB	PZ	RRC ²	CC	Superior Court	Nghd. Meeting	Code Reference
Abatements					D	A					A		ZDC 6-310
Annexation										D	A		ARS 9-471
Code Interpretation/ Similar use Rulings			D			A			A		A		ZDC 6-301
Code Text Amendment								Rev	Rev	D	A		ZDC 6-304
Development Plan Review Major (all new development & expansions over 5,000 square feet, except single-family homes not included in a PAD Overlay) Minor (expansions up to 5,000 square feet or 20% of existing building, which ever is less; and two- and three-family dwelling projects)							D		D	A	A		ZDC 6-306
	D						A		A	A	A		ZDC 6-306
General Plan Amendment								Rev	Rev	D	A	Yes	ZDC 6-302
Major Amendment								Rev	Rev	D	A	Yes	ZDC 6-302
Lot Line Adjustment										D	A		TCC 30
Lot Split	D									A	A		TCC 30
Modify Approved Development Plan, PAD Overlay or Condition of Approval: Major Modification Minor Modification				D A							A A	Yes	ZDC 6-312 ZDC 6-312
Planned Area Development Overlay (PAD Overlay), and PAD Overlay Amendments								Rev	Rev	D	A	Yes	ZDC 6-305
Preliminary Review Process	Rev												ZDC 6-202
Shared Parking Applications	D							A			A		ZDC 6-311
Sign Permit	D						A			A	A		ZDC 4-904
Subdivision, Preliminary Final								D	D	A D	A A		TCC 30 TCC 30
Time Extension	D			D							A		ZDC 6-901
Use Permit					D	D/A		D	D/A	A	A	Yes	ZDC 6-308
Variance					D	D/A			D/A		A	Yes	ZDC 6-309

1. Where this Code identifies more than one possible decision or appeal body, the Development Services Manager shall determine which body is applicable to a particular project.
 2. Review or decision-making body determined by project location for the RRC.

KEY:**DS MGR** = Development Service Manager or designee**ZA** = Zoning Administrator**ORIGINAL** = Decision body that made the original decision (modifications)**HO** = Hearing Officer**BA** = Board of Adjustment**DRB** = Design Review Board**PZ** = Planning and Zoning Commission**RRC** = Redevelopment Review Commission**CC** = City Council**Rev** = Reviews and recommends action to decision-making body**D** = Decision-making body**A** = Appeal Authority**Nghd. Meeting** = Neighborhood Meeting

Table 6-101A – Applications by Decision Body and Type of Procedure ¹													
Type of Procedure:	Decision Body:	DS MGR	ZA	ORIGINAL	HO	BA	DRB	PZ	RRC ²	CC	Superior Court	Nghd. Meeting	Code Reference
Zoning Map Amendments and Code Text Amendments								Rev	Rev	D	A	Yes	ZDC 6-304

CHAPTER 2 – APPLICATION SUBMITTAL AND REVIEW

Section 6-201 Initiation and Withdrawal of Application.

- A. **Initiation of Application.** An application may be initiated under this Code by the City Council or by the owner of the subject parcel. The property owner's written authorization shall be required for all applications. The City Council may initiate an application without the owner's authorization for a zoning (re-zoning) amendment.
- B. **Withdrawal.** An applicant may withdraw an application at any time or the Development Services Manager may withdraw an application at the request of the applicant.

Section 6-202 Application Submittal.

A. Preliminary Review Process.

1. **Purpose.** The purpose of the preliminary review is intended to acquaint the prospective applicant or applicant's representative(s) with the requirements of this Code, the General Plan and other relevant city policies and regulations. Preliminary review is intended to be informative and identify potential issues.
2. **Applicability.** The preliminary review is required for annexations, General Plan amendments, major *development plans*, PAD Overlays, zoning map amendments and *subdivisions*, but is not required for individual *single-family dwelling* applications or applications regarding individual *structures* that are accessory to a *single-family dwelling*. Minor *development plans* and exterior modifications to existing *development* may require preliminary review upon determination of the Development Services Manager. A preliminary review may also be held as requested by the prospective applicant or applicant's representative for any proposal.
3. **Requirements.** Applications for preliminary review under this Code shall be submitted to the Development Services Department, in accordance with the format and upon such forms as established by the Development Services Manager.
4. **Preliminary Review Conference.** Upon a preliminary review request being filed, staff will notify the applicant or applicant's representative of a preliminary review conference which shall take place within 20 business days of the preliminary review application being filed and be held at the Development Services Department by appointment. After reviewing the information provided from the applicant, staff from the reviewing city departments and divisions will prepare comments. Staff will review the comments with the applicant or applicant's representative at the preliminary review conference and provide information on city code requirements, procedures, and other relevant city policies and regulations. If the city is unable to comply with these time frames, notification will be made to the applicant and proceed as soon as practicable.

- B. Application Forms and Submittal Requirements.** Applications under this Code shall be submitted to the Development Services Department, in accordance with the format and upon such forms as established by the Development Services Manager. Applications must be signed by the property owner or the property owner's authorized representative, except that applications initiated by the City Council must be signed by the Development Services Manager.
- C. Concurrent Review of Applications for Same Project.** The applicant or Development Services Manager may elect to combine multiple applications for concurrent review when the applications are for the same project and the same decision-making body is responsible for reviewing all of the applications related to the project. For example, the Zoning Administrator may review an application for a code interpretation concurrently with an application for a *non-conforming use* determination; and the Planning and Zoning Commission may review an application for Planned Area Development Overlay and a *subdivision* plat concurrently.

Section 6-203 Application Acceptance.

- A. Review for Completeness.** The Development Services Manager shall review the application for completeness, in conformance with this section. The city will not schedule a meeting or hearing date or begin administrative review until the application is complete. If the applicant fails to submit the missing information within sixty (60) calendar days of the first submittal, the Development Services Manager may notify the applicant that the application cannot be accepted and a new application will be required for the proposed project. Such a decision by the Development Services Manager requiring a re-application shall be subject to administrative appeal and shall not be construed as denial of the application.
- B. Complete Application.** A complete application is one which fulfills the following general requirements, more specifically described on official application forms available from the Development Services Department:
 1. A completed original application form that is signed by the property owner or authorized representative agent, or the Development Services Manager for applications initiated by the City Council. In lieu of signature by property owner, a letter of authorization shall substitute;
 2. Application fee, payable to the City of Tempe in accordance with the fee schedule in effect at the time of application pursuant to Appendix G;

3. An application requiring a public hearing pursuant to Section 6-206 shall provide the current Maricopa County tax map(s) showing the subject property(ies) and all properties within three hundred (300) feet of the subject property(ies), and a list of the names and addresses of the owners of record within that three hundred (300) foot area, in the form and manner as required by the Development Services Manager. For applications regarding existing *developments* with commercial, industrial or *mixed-use* zoning, the names and mailing addresses of all tenants within the subject property(ies) shall also be included. For projects containing more than one (1) parcel, or phases of a larger project, the three hundred (300) foot measurement shall be taken from the perimeter of the entire project including all future phases of that project. The Development Services Department will provide the applicant with a list of recognized neighborhood and homeowner associations within the vicinity of the project for notification pursuant to Part 6, Chapter 4;
 4. A letter explaining the nature and intent of the proposed *development* and reasons justifying the request. References to the effects produced by the request upon surrounding neighborhoods, and the city at large, should be included; and
 5. Additional information pursuant to the application form for each type of request, including, for example, *development plans*, elevations, Planned Area Development Overlays, or *landscape plans*. In addition, the applicant may submit additional information not specifically requested by the application form but which will aid in the understanding and review of the application.
- B. Processing Application.** Processing of an application indicates only that the application is ready for review. The Development Services Manager may accept additional information from the applicant at the discretion of the Manager during the review process.

Section 6-204 Administrative Application Review Procedures.

An Administrative application review includes the staff interpretation of the administration related to this Code without public meeting or public hearing. The steps in reviewing administrative applications include the following:

- A. Preliminary Review Process.** No preliminary review process is required for administrative review applications; however, an applicant may request such preliminary review pursuant to Section 6-202 A.
- B. Application Submittal and Review for Completeness.** The applicant shall submit an application to the Development Services Department, in accordance with the format and upon such forms as established by the Development Services Manager. The application shall be reviewed for completeness pursuant to Sections 6-202 and 6-203.
- C. Review.** The authorized Planning Staff shall review the application pursuant to Part 6, Chapters 1 and 2 and may act upon the application to approve, approve with conditions, or deny the request.

- D. **Notice of Decision.** The Development Services Manager, or designee, shall provide notice of the administrative decision in writing to the applicant or the applicant's representative and owner(s) of the subject property within fourteen (14) calendar days after the date of filing the administrative application.
- E. **Appeal.** Any appeals of an administrative decision shall be filed in accordance with Part 6, Chapter 8, Appeals. Such appeal shall be forwarded to the appropriate decision-making body pursuant to Part 6 Chapter 8 and placed on the next regularly scheduled hearing or meeting agenda or heard administratively within fourteen (14) calendar days from the date of filing the appeal.

Section 6-205 Public Meeting Application Review Procedures.

A Public Meeting is held to gather input from the community but does not require advertising or posting of the specific property. The steps in reviewing public meeting applications include the following:

- A. **Preliminary Review Process.** Pursuant to Section 6-202 regarding the preliminary review process, preliminary review may be requested by the applicant for any matter. See Section 6-202 for further requirements.
- B. **Application Submittal and Review for Completeness.** The applicant shall submit an application to the Development Services Department, in accordance with the format and upon such forms as established by the Development Services Manager. The application shall be reviewed for completeness pursuant to Sections 6-202 and 6-203.
- C. **Schedule Public Meeting.** The Development Services Manager, or designee, shall schedule the public meeting with the appropriate decision-making body according to the publicly available public meeting schedules. (See Section 6-101, Summary Decision Matrix and Section 6-403, Notice for Public Meetings.) The Development Services Manager, or designee, shall also notify the applicant in writing of the public meeting date(s) within five (5) calendar days of the scheduling of such public meeting.
- D. **Review.** Planning Staff shall review the application and provide comments to the Development Services Manager or designee, who will then prepare a staff report in accordance with Section 6-406. Planning Staff shall provide the staff report to the applicant and to the decision-making body prior to the public meeting.
- E. **Public Meeting.** A public meeting(s) shall be held before the appropriate decision-making body pursuant to Table 6-101A in Section 6-101. The decision-making body shall render a decision on the application pursuant to Part 1, Chapter 3 following a public meeting.
- F. **Notice of Decision.** The Development Services Manager, or designee, shall provide notice of the decision in writing to the applicant or the applicant's representative and owner(s) of the subject property within five (5) calendar days after the decision is rendered.

- G. Appeal.** Any appeal of a public meeting decision shall be filed with and forwarded to the appropriate decision-making body pursuant to Part 6, Chapter 8, Appeals, no later than fourteen (14) calendar days after the date on which the decision was rendered.

Section 6-206 Public Hearing Application Review Procedures.

A Public Hearing shall be preceded by public notice and is held to gather input from the community. The steps in reviewing public hearing applications include the following:

- A. Preliminary Review Process.** Pursuant to Section 6-202 regarding the preliminary review process, preliminary review may be requested by the applicant for any matter, but is required for annexations, General Plan Amendments, major *development plans*, PAD overlays, zoning map changes and *subdivisions*. See Section 6-202 for further requirements.
- B. Application Submittal and Review for Completeness.** The applicant shall submit an application to the Development Services Department, in accordance with the format and upon such forms as established by the Development Services Manager. The application shall be reviewed for completeness pursuant to Sections 6-202 and 6-203.
- C. Neighborhood Meeting.** The applicant shall comply with Section 6-402 regarding conducting an informational neighborhood meeting.
- D. Schedule Public Hearing.** The Development Services Manager, or designee, shall schedule a public hearing with the appropriate decision-making body according to the publicly available public hearing schedules. (See Section 6-101, Summary Decision Matrix and Section 6-404, Notice for Public Hearings.) The Development Services Manager, or designee, shall also notify the applicant in writing of the public hearing date(s) within five (5) calendar days of the scheduling of such public hearing.
- E. Public Notification.** Staff shall issue public notice pursuant to Section 6-404. Such public notification shall include, but not be limited to, posting a *sign* on the property and sending notices by mail to property owners within 300 feet of the property at least 15 calendar days prior to the public hearing date.
- F. Review.** Staff shall review the application and provide comments to the Development Services Manager, or designee, who will then prepare a staff report in accordance with Section 6-406. Staff shall provide the staff report to the applicant and to the decision-making body prior to the public hearing.
- G. Public Hearing.** A public hearing(s) shall be held before the appropriate decision-making body pursuant to Table 6-101A in Section 6-101. The decision-making body shall render a decision on the application pursuant to Part 1, Chapter 3 following a public hearing.
- H. Notice of Decision.** The Development Services Manager, or designee, shall provide notice of the decision in writing to the applicant or the applicant's representative and owner(s) of the subject property within ten (10) calendar days after the decision is rendered.

- I. **Appeal.** Any appeal of a public hearing decision shall be filed with and forwarded to the appropriate decision-making body pursuant to Part 6, Chapter 8, Appeals. When the City of Tempe is the appellate body, appeals shall be filed within fourteen (14) calendar days from the date of the decision which is being appealed. When the Superior Court is the appellate body, appeals shall be filed within thirty (30) calendar days from the date of the decision which is being appealed.

Section 6-207 Legislative Review.

For requirements related to City Council review, please refer to City Charter, Section 2.11, Action Requiring Ordinances in General, and Arizona Revised Statute 9-461.06.

CHAPTER 3 – APPLICATIONS

Section 6-301 Code Interpretations and Similar Use Rulings.

- A. **Purpose.** Any use not appearing in this code which is similar to, and not more detrimental than the uses permitted herein, as determined by the Zoning Administrator, may be permitted based on a code interpretation and similar use ruling.
- B. **Procedure.** Code interpretations and similar use rulings are processed as administrative review decisions by the Zoning Administrator pursuant to Part 6, Chapter 1 and 2. Decisions by the Zoning Administrator may be appealed to the Board of Adjustment pursuant to Part 6, Chapter 8. (Please refer to the Development Services Department for application requirements.)
- C. **Approval Criteria.** The decision-making body shall base its decision regarding a code interpretation and similar use ruling on the definitions and other provisions contained in this Code, relevant city policy, and/or any applicable State or Federal law or case law.
- D. **Record.** Code interpretations and similar use rulings shall be catalogued and kept in the Zoning and Development Code Appendix.

Section 6-302 General Plan Amendment.

- A. **Purpose.** The General Plan is an evolving document that is designed to change based on community needs. The purpose of a General Plan amendment is to facilitate reasonable changes in effort to maintain a livable and sustainable urban environment that is sensitive to issues that impact where people live, learn, work and play.
- B. **Applicability.** There are two (2) types of amendments to the General Plan, amendments and major amendments. Any change to the maps or text of the General Plan, is an amendment to the General Plan. Community Plans and Specific Plans are amendments to the General Plan. Any change determined by the Development Services Manager to be a major amendment pursuant to the criteria below has additional processing requirements. A proposed plan or project is a major amendment to the General Plan if any one (1) of the following apply:
 - 1. A Specific Plan which decreases any land use category within the specified area by one percent (1%);
 - 2. The plan or project results in significant *alteration* to or deviation from the Water Master Plan;
 - 3. The plan or project results in significant *alteration* to or deviation from the Comprehensive Transportation Plan; and

4. The plan or project decreases the acreage of any projected land use ratios city-wide at the time of application by the following criteria:
 - a. Residential land use by one percent (1%);
 - b. Open space land use by one percent (1%); or
 - c. Any other land use category by two percent (2%).

(For the acreage resulting in a major amendment, see the land use element chart of projected land uses within the city's adopted general plan. The projected land uses are subject to update by amendment to the general plan. Calculation will be made with the most updated data at the time of application.)

C. Procedure.

1. Commission Action:
 - a. Amendments. The Planning and Zoning Commission or the Redevelopment Review Commission, as applicable, shall hear and forward its recommendation to the City Council after at least one (1) public hearing in accordance with the public hearing procedures of Section 6-206; and
 - b. Major amendments. The Planning and Zoning Commission or Redevelopment Review Commission, as applicable, shall hold at least two (2) public hearings, in accordance with the public hearing procedure. Hearings shall be in different locations to encourage community participation. The first hearing shall be held for the purpose of gathering public information only. A recommendation shall be forwarded to the City Council only after the second public hearing.
2. City Council Action:
 - a. Amendments. Applications for a general plan amendment shall be heard by the City Council during at least one (1) public hearing;
 - b. Major Amendments. Applications for a general plan major amendment shall be heard by the City Council during at least (2) public hearings;
 - c. The initial public hearing(s) shall be held for the purpose of gathering public information only. The final hearing on an application for a major amendment must be held at one (1) annual public hearing in the calendar year that the proposed major amendment was filed. This annual meeting shall be held in October, at a date to be determined by the City Council; and
 - d. Major amendments shall also be approved by an affirmative vote of at least two-thirds (2/3) of the City Council.

3. Final Hearing Notification Requirements. At least sixty days (60) before either an amendment or major amendment, staff shall transmit the proposal to the applicable commission and the City Council and submit a copy for review and comment to:
 - a. The planning agency of Maricopa County;
 - b. Each municipality that is *contiguous* to the corporate limits of the city;
 - c. The regional planning agency within which the city is located;
 - d. The Department of Commerce or any other state agency that is subsequently designated as the general planning agency for the state;
 - e. Any person or entity that requests in writing to receive a review copy of the proposal; and
 - f. Notice of time and place of hearings and availability of relevant materials shall be:
 - i. Advertised by publication at least once, in a newspaper of general circulation in the city, at least fifteen (15) and not more than thirty (30) calendar days before the hearing;
 - ii. Posted on the website at least fifteen (15) and not more than thirty (30) calendar days before the hearing;
 - iii. Posted at the City Council Chambers and Clerks Office at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law;
 - iv. If modifying a map, then post property with dates, times and locations of the public hearings, and a summary of the amendment. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way or a *public street* or road for maximum visibility. Posting shall be done not less than fifteen (15) and not more than thirty (30) calendar days before the first hearing. It shall not be the responsibility of the city to maintain the notice once it has been placed on the subject property; and
 - v. If modifying a map, then mailed notification of public hearings shall be sent not less than fifteen (15) and not more than thirty (30) calendar days before the first hearing to:
 - a. The applicant or representative and the owners of the subject property;
 - b. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant; and

- c. The chairperson of the registered neighborhood association(s) and home owners association(s) in which subject property is located.

D. Approval Criteria. No General Plan amendment shall be approved unless it has substantial conformance with the criteria below, and any other criteria determined by the City Council.

1. Appropriate short and long-term public benefits;
2. Minimal negative impacts on land use, water infrastructure or transportation;
3. Helps the city attain applicable objectives of the General Plan;
4. Provides rights-of-way, transit facilities, open space, recreational amenities or *public art*;
5. Potentially negative influences are mitigated and deemed acceptable by the City Council; and
6. Judgment of the appropriateness of the amendment with regard to market demands, and impacts on surrounding area, service, fiscal, traffic, historic properties, utilities and public facilities.

State law reference – ARS 9-461.06 Adoption and amendment of General Plan

Section 6-303 Specific Plan *[reserved]*

Section 6-304 **Zoning Map Amendments (including Overlay Districts) and Code Text Amendments.**

- A. Purpose.** The regulations and boundaries of zoning districts set forth in this Code may be amended whenever deemed necessary to best serve the public interest, and the health, comfort, convenience, safety, and general welfare of the city.
- B. Applicability.** Amendments to the text or zoning map of this Code shall not be made except through the adoption of an amending ordinance by the City Council and following the procedure prescribed in this Code.
- C. Procedure.** An application for zoning map or code text amendment shall be made as a written request submitted to the Development Services Manager. The written request shall specify the nature of the amendment with pertinent details to explain or support the request. Requests for zoning map or code text amendments shall be taken to the Planning and Zoning Commission or Redevelopment Review Commission by the owner or owners of real property situated in the city or by any officer, department, board or commission of the city, or by the City Council, under its own motion. In addition the following are required:
 - 1. Applications for all zoning districts shall require simultaneous processing of a *development plan* or a PAD overlay, per Sections 6-305 and 6-306.
 - 2. Planning and Zoning Commission or Redevelopment Review Commission , as applicable, shall review the request and make a recommendation to City Council in a public hearing. The recommendation of approval of any amendment by the commission shall be based on a finding of consistency and conformance with the General Plan and may include conditions of approval.
 - 3. City Council Review and Approval Criteria. The City Council shall conduct at least one public hearing for zoning map and code text amendments. Approval by the City Council of an amendment shall be based on a finding that the zoning amendment is in the public interest and is consistent and conforms with the General Plan. Any approval may be subject to such conditions as the council deems applicable in order to fully carry out the provisions and intent of this Code.

State law reference—Zoning amendments, procedures, A.R.S. §9-462.01, §9-462.03, §9-462.04.

Section 6-305 **Planned Area Development Overlay Districts.**

- A. Purpose.** The purpose of *Planned Area Development Overlay Districts* is to accommodate, encourage and promote innovatively designed *developments* involving residential and/or non-residential land uses, which form an attractive and harmonious unit of the community. Such a planned *development* may be designed as a large-scale separate entity, able to function as an individual community, neighborhood, or *mixed-use development*; as a small-scale project which requires flexibility because of unique circumstances or design characteristics; or as a transitional area between dissimilar land uses.

This zoning designation recognizes that adherence to a traditional pattern of *development* standards, (i.e. height, *setback*, *lot coverage*) space, bulk and use specifications contained elsewhere in this Code would preclude the application of the PAD concept. Therefore, where PAD zoning is deemed appropriate or necessary, traditional zoning regulations are replaced by performance considerations to fulfill the objectives of the General Plan. The PAD *overlay district* may be tailored to meet the specific *development* representations of an application. Hence one PAD overlay may vary considerably from another overlay.

B. Applicability. PAD Overlays may be applied to any zoning district in the City of Tempe and shall be processed as a zoning map amendment.

C. Procedure.

1. PAD Overlay Districts shall be processed to the Planning and Zoning Commission or Redevelopment Review Commission, as applicable, using the public hearing procedure. PAD Overlay Districts shall also be processed to the City Council, using the public hearing procedure, after review and recommendation by the Planning & Zoning Commission, or when part of a zoning map amendment or appeal of Redevelopment Review Commission action;
2. Modifications. Once a PAD Overlay District request has been approved, it can be modified or amended per Section 6-312. Questions as to procedure for modifications to existing PADs shall be determined by the Zoning Administrator; and
3. Design Review Board (DRB). Design Review approval is required prior to issuance of building permits.

D. Approval Criteria. Approval of a PAD Overlay District requires conformance with the standards in subsections 1-4, below.

1. The allowable land uses in Part 3;
2. The *development* standards as established as part of the PAD Overlay District process, as well as, the standards allowed by *use permit* in Part 4;
3. Any applicable overlay district provisions in Part 5; and
4. The decision-making body may impose reasonable conditions to ensure conformance with these provisions.

E. Property Owners Associations. If a property owners association(s) is required, the covenants and restrictions shall include all applicable requirements under the Tempe City Code, and shall be reviewed by the City Attorney and Development Services Manager to determine if the association will remain responsible for maintaining common areas within the *development*. Such covenants and restrictions shall be recorded.

Section 6-306 Development Plan Review.

- A. Purpose.** Development plan review is intended to encourage, protect and enhance the functional and attractive appearance of the City of Tempe. The city recognizes that the creation of a desirable environment throughout the city for residents, businesses, and industry is a prime requisite for the preservation of property values; for the *development* of functional and compatible uses and *buildings*; and for the preservation of public health, safety and general values.
- B. Applicability.** Development plan review shall be as follows:
1. Major Development Plan Review. Applies to all *new development*, and expansions over five thousand (5,000) square feet *net floor area*, except single-family homes not included in a PAD Overlay and two (2) and three (3) *family dwellings*.
 2. Minor Development Plan Review. Applies to any modifications, or expansions up to five thousand (5,000) square feet of *net floor area* or twenty percent (20%) of the existing *building area*, whichever is less; and two (2) and three (3) *family dwellings*.
- C. Procedure.** Major *development plan* reviews are processed as public meetings through the Design Review Board (DRB) or Redevelopment Review Commission (RRC) when located in the RRC boundary area. Minor *development plan* reviews are processed as administrative review decisions through the Development Services Manager. Appeals to minor *development plans* shall be processed through the DRB or RRC as applicable.
- D. Approval Criteria.** *Development plan* approval requires conformance with the standards and criteria in subsections 1 and 2, below.
1. The placement of *buildings* reinforces and provides variety in the *street wall*, maximizes natural surveillance and visibility of pedestrian areas (*building* entrances, pathways, *parking* areas, etc.), enhances the character of the surrounding area, facilitates pedestrian access and circulation and mitigates heat gain and retention through:
 - a. Shade for energy conservation and comfort is an integral part of the design;
 - b. Materials shall be of superior quality and compatible with the surroundings and ;
 - c. *Buildings* and *landscape* elements have proper scale with the site and surroundings;
 - d. Large *building* masses are broken into smaller components that create a human-scale as viewed from the sidewalk;
 - e. *Buildings* have a clear base and top, as identified by ground floor elements, *roof* forms, and detailing;

- f. *Building* facades have architectural detail and contain windows at the ground level to create visual interest and to increase security of adjacent outdoor spaces by maximizing natural surveillance and visibility;
 - g. Special treatment of doors, windows, doorways and walkways (proportionality, scale, materials, rhythm, etc.) contributes to attractive public spaces;
 - h. On-site utilities are placed underground;
 - i. Clear and well lighted walkways connect *building* entrances to one another and to adjacent sidewalks;
 - j. *Accessibility* is provided in conformance with the Americans With Disabilities Act (ADA);
 - k. Plans take into account pleasant and convenient access to multi modal transportation options, and support the potential for transit patronage;
 - l. Vehicular circulation is designed to minimize conflicts with pedestrian access and circulation, and with surrounding residential uses. Traffic impacts are minimized, in conformance with city transportation policies, plans, and design criteria;
 - m. Safe and orderly circulation separates pedestrian and bicycles from vehicular traffic. Projects should be consistent with the Tempe Pedestrian and Bicycle Facility Guidelines, contained the Comprehensive Transportation Plan;
 - n. Plans appropriately integrate crime prevention principles such as territoriality, natural surveillance, access control, activity support, and *maintenance*;
 - o. Landscaping accents and separates *parking*, *buildings*, driveways and pedestrian walkways;
 - p. *Signs* must have design, scale, proportion, location and color compatible with the design, colors, orientation and materials of the *building* or site on which they are located. The decision-making body shall consider the following:
 - 1. *Sign* copy shall provide contrast with its background;
 - 2. *Sign* area and copy shall be proportional to the size of the *building* element on which it is located; and
 - 3. *Signs* for complexes or centers shall utilize materials which are complementary to the *building* and to the other *signs* on the premises.
 - q. Lighting is compatible with the proposed *building(s)* and adjoining *buildings* and uses, and does not create negative effects.
2. The decision-making body may impose reasonable conditions to ensure conformance with these provisions.

- E. Time Limitations.** *Development plan* approval shall be void if the *development* is not commenced or if a building permit has not been obtained, whichever is applicable, within twelve (12) months of such granting or within the time stipulated by the decision-making body.

Section 6-307 Subdivisions, Lot Splits and Adjustments.

- A. Purpose.** The purpose of this section is to provide for the orderly growth and harmonious *development* of the city; to insure adequate traffic circulation through coordinated *street*, transit, bicycle and pedestrian systems with relation to major thoroughfares, adjoining *subdivisions*, and public facilities; to achieve individual property *lots* of reasonable utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements; to insure consideration for adequate sites for *schools*, recreation areas, and other public facilities; and to promote the conveyance of land by accurate legal description and plat.

B. Applicability.

1. *Subdivision.* *Subdivision* applies to improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four (4) or more *lots*, tracts or parcels of land. Also, if a new *street* is involved, any such property which is divided into two (2) or more *lots*, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. *Subdivision* also includes any *condominium*, cooperative, community apartment, *townhouse* or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the *buildings* or the manner in which the *buildings* or airspace above the property shown on the plat are to be divided or as defined in A.R.S. § 9-463.02, as it may be amended.
2. *Lot Split.* *Lot* splits apply to the division of improved or unimproved land whose area is two and one-half (2 1/2) acres or less into two (2) or three (3) tracts or parcels of land for the purpose of sale or lease or as defined in A.R.S. § 9-463.
3. *Lot Line Adjustment.* *Lot line* adjustments apply to *property line* modifications within a recorded *subdivision* plat.

C. Procedure.

1. *Subdivision.*
 - a. Preliminary Subdivision Plat. Shall be processed to the Planning and Zoning Commission for approval at a public meeting.
 - b. Final Subdivision Plat. Shall be processed to the City Council for approval at a public meeting.

- c. Amended Final Subdivision Plat. Shall be processed to the City Council for approval at a public meeting.
- 2. Lot Split. Requires an administrative approval by the Development Services Manager. Appeals of the Development Services Manager decision shall be appealed to the City Council within fourteen (14) days of action.
- 3. Lot Line Adjustment. Requires approval by the City Council at a public meeting.

Reference — Subdivisions, City Code, Chapter 30.

D. Approval Criteria. See City Code Chapter 30, Subdivisions.

Section 6-308 Use Permit.

- A. Purpose.** The purpose of Section 6-308 is to ensure the orderly use of land in conformance with the General Plan and applicable city standards where uses are proposed that may require special limitations or conditions to provide compatibility with other uses.
- B. Applicability Based on Square Feet of Use.** For *use permits* that are based on the square footage devoted to a particular use, the square footage will be taken as the *net floor area* for the use requiring the *use permit*.
- C. Procedure for Use Permits Granted by the Hearing Officer and Board of Adjustment.** The following requests for *use permits* shall be taken to the Hearing Officer for a public hearing, and approval, denial, or approval with conditions:
 - 1. All *use permits* required in all residential districts (See Section 3-102);
 - 2. *Use permits* required for any *bar* which occupies less than four thousand five hundred (4,500) square feet in *net floor area*;
 - 3. *Use permits* required for any other use which occupies less than ten thousand (10,000) square feet in *net floor area* in all commercial and *mixed-use* districts except PCC-1 and PCC-2 (See Section 3-202);
 - 4. *Use permits* required for any use occupying less than twenty-thousand (20,000) square feet in *net floor area* in any *office/industrial* district (See Section 3-302);
 - 5. The Zoning Administrator may direct that a request defined by subsections 1 through 4 immediately above be heard instead by the Planning and Zoning Commission based on a review which includes but is not limited to the following factors:
 - a. Previous decisions by the city regarding the site on which the proposed use is located;
 - b. The probable impact of the requested use on its immediate surroundings; or

- c. The consistency of the requested use with the projected land uses, policies and principles of the General Plan.

D. Procedure for Use Permits Granted by the Planning and Zoning Commission or Redevelopment Review Commission. A neighborhood meeting is required pursuant to Section 6-402. Except where review by the Redevelopment Review Commission applies, the following requests for *use permits* shall be taken to the Planning and Zoning Commission for a public hearing, and approval, denial, or approval with conditions:

1. All *use permits* required in PCC-1, PCC-2, RCC, and CC;
2. *Use permits* required for any *bar* which occupies four thousand five hundred (4,500) square feet or more in *net floor area*;
3. *Use permits* required for any other use in a commercial or *mixed-use* zoning which occupies ten thousand (10,000) square feet or more in *net floor area*;
4. *Use permits* required for any use that occupies twenty thousand (20,000) square feet or more in *net floor area* in every industrial zone. For *use permits* to exceed the allowed percent of *retail* in an industrial district, the square footage devoted to *retail* will be taken as the *net floor area* for the use requiring the *use permit*;
5. The Zoning Administrator may direct that a request defined by subsections 1 through 4 immediately above be heard instead by the Hearing Officer or Board of Adjustment based on a review which includes but is not limited to the following factors:
 - a. Previous decisions by the city regarding the site on which the proposed use is located;
 - b. The probable impact of the requested use on its immediate surroundings; or
 - c. The consistency of the requested use with the projected land uses, policies and principles of the General Plan.

E. First Amendment. A *use permit* request for any activity that is protected by the First Amendment shall be heard by the decision-making body at the next regularly-scheduled public hearing complying with legal notice requirements following submittal of a complete application for such a permit. No continuances or other delays in such processing may occur without the concurrence of the applicant for such permit, provided that there is sufficient time to complete any public notification requirement. If approved, the use shall be commenced within one (1) year.

F. Approval Criteria.

1. A *use permit* shall be granted only upon a finding by the decision-making body, that the use covered by the permit, the manner of its conduct, and any *building* which is involved, will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirements, or standards prescribed therefore by this Code.

2. In arriving at the above determination, the following factors shall be considered, but not be limited to:
 - a. Any significant increase in vehicular or pedestrian traffic;
 - b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which, is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;
 - d. Compatibility with existing surrounding *structures* and uses; and
 - e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public.
3. The decision-making body may impose reasonable conditions to ensure conformance with these provisions.

G. Burden of Proof. The burden of proof for satisfying the aforementioned requirements shall rest with the applicant. A refusal of a *use permit* shall not be interpreted as the denial of a right, conditional or otherwise.

H. Conditions. Any *use permit* granted may be subject to conditions the decision-making body deems applicable in order to fully carry out the provisions and intent of the Code, including, but not limited to:

1. Limit the hours, days, place and/or manner of operation;
2. Require site or architectural design features that minimize impacts due to removal of vegetation, noise, vibration, exhaust/emissions, light, glare, erosion, water quality impacts, odor and/or dust;
3. Require landscaping, screening, drainage, water quality facilities, and/or improvement of *parking* and loading areas;
4. Designate the size, number, location and/or design of vehicle access points or *parking* areas;
5. Require additional *setbacks* and planting if deemed necessary; and
6. Limit the *building height*, size or *lot coverage*, and/or location on the site.

I. Effect of Use Permit.

1. The *use permit* is valid and operable only for the specific use as granted and subject to any specified time limit. No use may be modified, changed, altered or increased in *intensity*, in a manner that conflicts with the *use permit* and/or required conditions of approval, without approval of a new *use permit*.

J. Use Modifications. See Section 6-312.**K. Use Permit Time Limitation.** *Use permits* shall be void if the use is not commenced within twelve (12) months of such granting or within the time stipulated by the decision-making body.**Section 6-309 Variances.****A. Purpose.** This section provides for relief from the standards of this Code when needed because of circumstances applicable to a property, including its size, shape, topography, location or surroundings, where the strict application of this Code would deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.**B. Applicability.** *Variances* are applicable to quantified standards (e.g., *setbacks*, height, *lot* areas, dimensions, etc.) and non-quantified standards. *Variances* are not applicable to guidelines as specifically identified in this Code. Any *variance* granted shall not:

1. Make any changes in the uses and densities permitted in any zoning classification or zoning district;
2. Be for the purpose of rectifying a special circumstance, which was self-imposed by the property owner or applicant; or
3. Allow relief from any item expressly prohibited by this Code.

C. Procedure. Requests for *variances* from the terms of this Code shall be processed as a public hearing procedure to the decision-making body as provided in Section 6-101.

State law reference — *Variances*, power to grant, A.R.S. §9-462.06.

D. Approval Criteria. A *variance* shall not be authorized unless the decision-making body finds upon sufficient evidence:

1. That there are special circumstances or conditions applying to the land, *building* or use referred to in the application;
2. That authorizing the *variance* is necessary for the preservation and enjoyment of substantial property rights;
3. That authorizing the *variance* will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general; and, if applicable

4. That the applicant for a *sign variance* has received *development plan* approval (i.e., contingent upon *variance* approval) prior to a decision being made on the *variance*.
- E. **Conditions of Approval.** Any *variance* granted may be subject to such conditions deemed applicable by the decision-making body as will assure that the adjustment authorized shall not be detrimental to other properties in the vicinity and zoning district in which such property is located. *Variances* shall become void if the subject property does not conform to all conditions, requirements, and standards prescribed by the decision-making body as a condition for approval of the *variance*. See also, Section 6-902, Revocation of a Permit/Approvals.
 - F. **Variance Time Limitations.** *Variances* shall be void if the use is not commenced or if a building permit has not been obtained, whichever is applicable, within twelve (12) months of such granting or within the time stipulated by the decision-making body. The time period for a *variance* may be extended in conformance with Section 6-901, and shall only be renewed upon approval of a new *variance* application.

Section 6-310 Abatement.

- A. **Purpose.** Abatements shall remove code violations from property.
- B. **Applicability.** Refer to Tempe City Code, Chapter 21.
- C. **Procedure.** Abatements are processed through the Hearing Officer as a public hearing, with appeals being heard by the Board of Adjustment, appealed to the Superior Court.

Section 6-311 Shared Parking.

- A. **Purpose.** *Shared parking* allows for different uses on one site to share *parking*, there by increasing flexibility, use, *building* design and other *development plan* criteria.
- B. **Applicability.** Any commercial, industrial, civic, or *mixed-use* project may request approval of alternative *parking* space requirements using a *parking* demand study. The application procedures, methodology, specifications, and approval criteria for *parking* demand studies are provided in the Appendix F. See also, Section 4-604.
- C. **Procedure.** *Shared parking* applications shall be processed using the administrative review procedure through the Development Services Manager.
- D. **Approval Criteria.** A *shared parking* model shall be reviewed for compliance with the standards of Section 4-604 (See Appendix F, Shared Parking Model).

Section 6-312 Modify Approved Plan, PAD Overlay, Use Permit, or Condition of Approval.

- A. Purpose.** This section allows an applicant to modify an approved plan or condition of approval when a project needs change.
- B. Applicability.** This section applies to all types of applications approved under this Code.
- C. Procedure.** There are four (4) types of modification procedures as follows:
1. **Minor Modifications to Approved Plans.** Minor modifications are processed through an administrative review by the Development Services Manager. Minor modifications include:
 - a. An increase in the *floor area* proposed for non-residential use by less than ten percent (10%) where previously specified, unless such increase creates a *variance*;
 - b. A reduction of less than 10 percent (10%) of the area reserved for landscaping, open space, or outdoor living area, unless such reduction creates a *variance*; or
 - c. Changes similar to those listed in subsection (a) and (b) that are not likely to have an adverse impact on adjoining properties, as determined by the Development Services Manager.
 2. **Major Modifications to Approved Plans.** A major modification is a significant change that exceeds the threshold(s) provided for a minor modification under 6-312 C.1. Major modifications shall be processed as public hearing applications. The hearing body shall be the same as the hearing body that made the original decision of approval.
 3. **Minor Modifications to Conditions of Approval.** A minor modification is one that does not change the basic intent of the condition as determined by the Development Services Manager.
 4. **Major Modifications or Elimination of Conditions of Approval.** A major modification changes the basic intent of the original condition as determined by the Development Services Manager or eliminates the condition. Major modifications shall be processed through the original decision-making body.
- D. Approval Criteria.**
1. **Minor Modifications.** Minor modifications are administrative decisions and may be approved by staff when they meet the basic thresholds defined in this section, and when approval does not cause a violation of any provision of this Code.
 2. **Major Modifications.** The approval criteria for major modifications are the same as for the original decision.

3. Elimination of Conditions of Approval. A request to remove condition(s) of approval shall only be granted if the decision-making body determines that:
 - a. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of conditions; or
 - b. The condition could not be implemented because it is beyond the reasonable control of the applicant and the modification will not require a significant modification of the original decision; or
 - c. The circumstances have changed to the extent that the condition(s) is no longer needed or warranted; or
 - d. A different condition(s) would better accomplish the purpose of the original condition.

Section 6-313 Security Plan.

- A. **Purpose.** The purpose of approving a security plan is to protect the public health, safety, and welfare through crime prevention measures that are tailored to proposed land uses.
- B. **Applicability and Procedure.** Security plans are required for the following uses subject to the standards contained in Chapter 26, Article V, Security Plans, of the Tempe City Code:
 1. *Bars*, cocktail lounges, taverns, discotheques, nightclubs and similar businesses;
 2. *Adult-oriented businesses*;
 3. Recreational or amusement businesses, including both indoor and outdoor activities, including pool halls and *video arcades*;
 4. *Entertainment* as accessory to *restaurant* facilities, *bars* or similar establishments;
 5. Hotels and motels;
 6. Convenience stores; and
 7. Any other use determined by the Development Services Manager or the Chief of Police, or their designees, to be similar to a use listed immediately above.

CHAPTER 4 – PUBLIC NOTICE AND STAFF REPORTS

Section 6-401 General Provisions.

- A. Mailed Notices.** Notices mailed under provisions of this Code shall be mailed to property owners and neighborhood/homeowner associations, and tenants (if required) within the notification area as defined in Section 6-401 B. The applicant is responsible for mailing neighborhood meeting notices in accordance with Section 6-402, and the city is responsible for mailing all other public notices under this Code in accordance with Section 6-404 and 6-405. The city is not responsible for receipt of mailed notices.
- B. Notification Area.** The boundary of the subject property shall be used in determining the geographic area to be notified. For projects containing more than one parcel, or phases of a larger project, the three hundred (300) foot measurement shall be taken from the perimeter of the entire project (all phases). The Development Services Department will provide a list of recognized neighborhood and homeowner associations, within the vicinity of the project, for notification.

Section 6-402 Neighborhood Meetings.

- A. Purpose.** The purpose of the neighborhood meeting is to provide a means for the applicant, surrounding residential neighbors, and registered neighborhood and homeowner's association representatives to review a preliminary *development* proposal and solicit input and exchange information about the proposed *development*. This preliminary meeting is intended to result in an application that is responsive to neighborhood concerns and to expedite and lessen the expense of the review process by avoiding needless delays, appeals, remands or denials. The applicant is responsible for all costs associated with the neighborhood meeting.
- B. Applicability.** A neighborhood meeting is required for the following types of applications when located within three hundred (300) feet of a residential use:
 1. Use permits scheduled for public hearing before the Planning and Zoning Commission or Redevelopment Review Commission;
 2. Variances;
 3. Development plans, when a public hearing is required;
 4. Planned Area Development Overlay Districts; *
 5. Major modification to an approved plan or condition of approval (when original approval made at a public hearing); *
 6. Zoning map amendments; and *
 7. General Plan map amendments.

- C. **Meeting Schedule.** The applicant is required to hold one (1) meeting, prior to the first hearing on an application for a specific site, but may hold more if desired. The required meeting shall be held at least fifteen (15) days before the first hearing on the application.
- D. **Meeting Location.** Neighborhood meetings shall be held at a location near the proposed *development* site. The meeting shall be held on a weekday evening, or weekends at any reasonable time and in a publicly *accessible* location.
- E. **Notification Requirements.** Notice of the meeting shall be provided by the applicant as follows:
 - 1. Posting not less than fourteen (14) calendar days prior to the date of neighborhood meeting, a notice of the date, time and place and a summary of the request. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way of a *public street* or road. It shall be the responsibility of the applicant to use reasonable efforts to maintain the notice once it has been placed on the subject property. The Development Services Department will supply the *sign(s)* that shall be no smaller than six (6) square feet at a cost to the applicant. It is the responsibility of the applicant to post the notice affiliated with items identified in (B) above with an asterisk (*), with a *sign* having a minimum *sign* area of sixteen (16) square feet;
 - 2. Mailing a notice not less than fourteen (14) calendar days prior to the date of the neighborhood meeting to:
 - a. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant;
 - b. The chairperson of the registered neighborhood association(s) and home owners association(s) within six hundred (600) feet of the subject property; and
 - c. All tenants, within the boundary of the subject property(ies), for projects with commercial, industrial or *mixed-use* zoning districts.
- F. **Meeting Summary.** The applicant shall submit to the Development Services Department seven (7) days before the first hearing on the matter a written summary of the issues and discussions from the meeting and the meeting notes.

Section 6-403 Notice for Public Meetings.

- A. **Purpose and Applicability.** The purpose of the public meeting is to provide a means for the Design Review Board to receive input from the public. See Section 1-309.
- B. **Agenda as Notice of Meeting.** Agendas for all public meetings shall be posted at City Hall at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law.

- C. Notice of Decision.** Written notice of the decision made by the decision-making body in a public meeting shall be provided to the applicant and property owner (if different) and made available for public inspection at the Development Services Department.

Section 6-404 Notice for Public Hearings.

- A. Public Notice.** Public hearings shall be preceded by public notice in accordance with this section and Arizona open meeting law. Public hearings for General Plan amendments have additional notification requirements; see Section 6-302 General Plan Amendment. When multiple applications are under review for the same project, the city may simultaneously issue notice for multiple applications. Such notice may be given in the initial posting and of the initial hearing and any subsequent hearing.
- B. Agenda.** Upon receiving a complete application for action requiring a public hearing under this Code, the Development Services Manager shall place the request upon the next available agenda for a regular meeting of the decision-making body.
- C. Notification Requirements.** The Development Services Department or the City Clerk shall issue public notices for all types of hearings under this Code as follows:
1. Posting the agenda at City Hall at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law;
 2. Posting not less than fifteen (15) calendar days prior to the dates of public hearings, a notice of the date, time and place of each public hearing and a summary of the request. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way of a *public street* or road. It shall be the responsibility of the applicant to use reasonable efforts to maintain the notice once it has been placed on the subject property. The Development Services Department will install the *sign(s)* that shall be no smaller than sixteen (16) square feet at a cost to the applicant. Posting requirements do not apply to Zoning and Development Code text amendments and Administrative appeals;
 3. Submitting for publication in the official newspaper the hearing notice, at least once, fifteen (15) days prior to the public hearing; and
 4. Mailing a hearing notice not less than fifteen (15) calendar days prior to the date of the initial hearing to:
 - a. The applicant or representative and owners of the subject property;
 - b. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant;
 - c. The chairperson of the registered neighborhood association(s) and home owners association(s) within the vicinity of the project;
 - d. All tenants, within the boundary of the subject property(ies), for projects with commercial, industrial or *mixed-use* zoning districts; and

- e. Mailing of hearing notices does not apply to Zoning and Development Code text amendments and Administrative appeals.
 - 5. If notification is required at the City Council, the City Clerk shall submit for publication in the official newspaper the request, at least once, fifteen (15) days prior to the meeting. If a Tempe City Code amendment is involved, the City Clerk shall comply with the requirements of the City Charter.
- D. Content of Public Hearing Notice.** Public hearing notices issued under Section 6-404 C. shall contain:
- 1. The name of the applicant or owner;
 - 2. A description of the subject property reasonably sufficient to inform the public of its location;
 - 3. A concise description of the proposed *development* or use;
 - 4. The designation of the hearing body; and
 - 5. The time, date and place of the hearing.
- E. Decision Notice.** Written notice of the decision of the hearing body shall be provided to the applicant and property owner (if different). The notice of decision shall contain a brief summary of the decision and conditions of approval, if any.

Section 6-405 Notice of Appeals.

Notice of an appeal of a public meeting or public hearing shall be provided in the same manner as the original meeting or hearing.

Section 6-406 Staff Reports.

- A. Staff Reports for Boards and Commissions.** After any application has been submitted for a public hearing/meeting as provided for in this Code and has been placed on an agenda, the Development Services Department shall prepare a written report for the decision-making body that includes the following information:
- 1. The name of the applicant or initiating party;
 - 2. A description of the subject property or amendment, including any maps, drawings etc.;
 - 3. A statement of the proposed request and any history pertinent to such request or property;
 - 4. A statement of the observations of the personal inspection of the subject property and surrounding area; and

5. A recommendation for disposition of the request.

B. Staff Reports for City Council. Any request forwarded to the City Council shall be transmitted to the City Clerk for inclusion on the agenda of a regular meeting of the City Council. A report shall accompany the request and include items in Section 6-406A1-5 and the following information:

1. A concise statement of history and facts on the processing of the request by the Development Services Department and the public hearing(s) held by the Planning and Zoning Commission, Redevelopment Review Commission, or public meeting held by the Design Review Board;
2. The findings made by the above noted Boards or Commissions and the action taken; and
3. Any other pertinent documents and maps, as well as other information deemed necessary by the City Clerk or Development Services Manager.

CHAPTER 5 – PUBLIC MEETINGS AND PUBLIC HEARINGS

Section 6-501 Purpose.

This chapter provides procedures for public meetings and public hearings. It is intended to provide an efficient and effective means of public review on land use and *development* decisions made by the city. The provisions set forth in this chapter also are intended to encourage public dialogue and comment that is relevant to the applicable approval. All public meetings and hearings shall be open to the public and held in an *accessible* location and shall provide special accommodation when requested.

Section 6-502 Rules of Procedure.

Public meetings and hearings shall be conducted in accordance with Section 6-502 and any rules of procedure adopted by the hearing body, so long as these procedures do not conflict.

A. Procedure. The following procedures apply to all public meetings and public hearings, except as provided for zoning map amendment protests under Section 6-502 C.:

1. Call for the request as stated on the agenda and announce that any person believed to be affected by the request may appear and will be heard, in person or by their representative;
2. Hear the report and recommendation submitted by the Development Services Department;
3. Time Limits. The decision-making body may set reasonable time limits for oral presentations. The decision-making body may also determine not to receive cumulative, repetitious, immaterial, derogatory or abusive testimony. Persons may be required to submit written testimony in lieu of oral if the decision-making body determines that a reasonable opportunity for oral presentations has been provided;
4. Hear a presentation by the applicant(s) describing the manner in which the proposal is consistent with city plans, policies, and codes;
5. Hear the relevant comments by the public regarding the application;
6. Hear the response to the public comments and a summary statement by the applicant;
7. The presiding officer may allow further comment, exhibits, and other evidence to be filed as part of the record of the meeting/hearing; and
8. Hold any pertinent discussion necessary for clarification or additional information.

- B. Decision.** Following discussion related to the application or comments received during the public meeting/hearing, the decision-making body will approve, approve with conditions, continue, or deny the application. In making the decision, consideration shall be given to the facts presented. The findings of fact justifying the decision shall be noted for the record. Decisions made under the provisions of this Code are effective on the date of approval (unless conditioned otherwise), except for those decisions subject to referendum.
- C. Zoning Map Amendment (rezoning) Protest.** The following procedure shall apply when a zoning map amendment is protested:
1. In the event that the owners of at least twenty percent (20%) of the following properties file a protest in writing against a proposed amendment with the City Clerk prior to the time of or at the public hearing of the City Council, it shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the City Council:
 - a. The area of the *lots* included in a proposed change; or
 - b. The area of adjacent properties extending one hundred and fifty (150) feet from any side or rear *property line* of the subject property.
 2. The area of properties directly opposite thereto extending one hundred fifty (150) feet from the *street* frontage of the opposite *lots*. Proposed amendments shall require a favorable vote of three-fourths (3/4) of all members of the City Council to become effective if a valid protest is filed in writing against the proposed amendment.
 3. If any members of the council are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths (3/4) of the remaining membership of the council, provided that such required number of votes shall in no event be less than a majority of the full membership of the council.

State law reference — A.R.S. §9-462.04(H).

Section 6-503 Record.

- A. Summary Minutes.** Summary minutes giving a reflection of the matters discussed, during a public hearing or meeting, shall be written.
- B. Additional Information.** Other materials and correspondence submitted prior to or at the public hearing or meeting shall be retained as part of the record.

Chapter 6 – CONDITIONS OF APPROVAL

Section 6-601 Conditions of Approval.

The decision-making body may impose conditions on any approval. Such conditions shall be designed to implement the requirements of this Code, protect the public from potential adverse impacts from the proposed use or *development*, or to fulfill an identified need for public services. In addition to those conditions imposed by the decision-making body, the city may consider as a requirement or condition any plan, exhibit, statement, or other material provided by the applicant and on record with the decision.

Section 6-602 Contract for Conditions.

When the approval requires a contract, conditions shall be set forth in a contract executed by the city and the applicant and approved as to form by legal counsel for the city. If a contract is required, no approval shall be effective until the conditions are recorded. As a condition of approval, the city may require that the contract or a memorandum thereof be filed in the County Deed Records and shall appear in the chain of the title of the subject property, if recording is required. In addition to any personal remedy, the condition shall constitute a burden running with the land in favor of the City of Tempe and, unless otherwise provided, shall be removed only with the written authorization of the Tempe City Council. The contract shall be enforceable by and against the parties, their heirs, successors and assigns. The contract, however, shall not restrict the authority of the City of Tempe from taking actions affecting the property.

Section 6-603 Time Limits on Conditions.

Conditions shall be fulfilled within the time limitations set forth or a reasonable time if no time limitations are specified. Failure to fulfill a condition within said time may result in initiation of revocation of the approval, citation or such other enforcement action as the city deems appropriate.

Section 6-604 Failure to Fulfill Previous Conditions.

The decision-making body may withhold a requested approval if it determines that the current applicant has not fulfilled a previous condition or requirement from a previous approval, granted to the applicant, on the subject property, and withholding the permit would encourage compliance or is necessary to protect the public from future noncompliance.

Section 6-605 Modification or Removal of Conditions.

Modification or removal of conditions of approval may be sought on appeal or as a new application, in accordance with Section 6-312. Such proposals shall be processed through the same procedure as was used to impose the conditions.

CHAPTER 7 – RE-APPLICATION AND RECONSIDERATION OF DECISIONS

Section 6-701 Re-Application.

In the event that an application is denied, an application that is substantially the same project or request will not be considered for a period of one (1) year from the date the initial application was denied, except as follows;

Section 6-702 Reconsideration as Extraordinary Remedy.

Reconsideration of a decision is available only as an extraordinary remedy upon a determination by the decision-making body that the criteria in subsections A and B are met:

- A. Mistake.** The party requesting reconsideration has sufficiently alleged in writing that a mistake of law or fact occurred; and the alleged mistake, if found to have occurred, was a substantial factor in the decision; and
- B. Hardship or Delay.** Reconsideration is appropriate to avoid delay or hardship that may be caused by an appeal.

Section 6-703 Motion for Reconsideration.

A motion for reconsideration must be filed with the Development Services Manager within fourteen (14) calendar days of the original decision. The motion shall address the factors set forth in Section 6-702 above. The applicable fee shall be submitted with the request. A motion for reconsideration may be filed by the applicant, the Development Services Manager, or a party of record.

Section 6-704 Motion for Reconsideration and Appeal Period.

Filing a motion for reconsideration is not a precondition to appealing the decision and does not stay the deadline for filing an appeal. To preserve the right to appeal, a party must file a petition for review as provided in Part 6, Chapter 8. If the decision-making body grants reconsideration, and ultimately rules in favor of the party filing for reconsideration, the party may terminate its appeal.

Section 6-705 Process for Reconsideration.

The decision-making body shall schedule and notify the parties of a new public hearing or meeting on the merits of the issues raised. Such hearing or meeting shall be held at the next reasonably available opportunity. The decision-making body shall limit their discussion to the issues raised in the motion for reconsideration and the merits of those issues. New evidence or testimony provided by the applicant or staff, shall be limited to grounds upon which the motion or petition for reconsideration was granted.

Section 6-706 Reconsideration and Appeals.

If the motion for reconsideration is denied or the decision is not altered upon reconsideration, any appeal of the original decision, timely filed, shall be processed in accordance with Part 6, Chapter 8, Appeals. If the motion is granted and the decision-making body modifies the previous decision, the parties to the initial decision shall be notified within ten (10) days of the decision and may appeal the decision as modified pursuant to Part 6, Chapter 8, Appeals.

Section 6-707 Reconsideration Limit.

No decision shall be reconsidered more than once.

CHAPTER 8 – APPEALS

Section 6-801 Purpose.

This chapter provides criteria and procedures to be used whenever an applicant or person is aggrieved by a decision by a decision-making body.

Section 6-802 Parties to an Appeal.

Any person, entity, or group aggrieved by a decision under this Code may be a party to an appeal hearing as provided in this Section.

- A. Public Hearing.** Such appeals shall be heard using the same procedures as the original public meeting/public hearing procedures in Part 6, Chapter 5.
- B. Appeal Stays Proceedings.** An appeal shall stay all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the decision-making body that, by reason of the fact stated in the certificate, the stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, except by a restraining order granted a court of record on application and notice to the Zoning Administrator.
- C.** In the event that a decision made under this Code is appealed, the appeal does not invalidate the approval. The holder of the approval may proceed with a use or *development* at their own risk.
- D. Conditions When Granting Appeal.** Any appeal granted may be subject to such conditions as the decision-making body deems applicable.

Section 6-803 Appeal Criteria.

- A. Appeal Criteria.** To effect an appeal, the petitioner must file an appeal petition with the Development Services Department, City Clerk or Superior Court not later than 5:00 p.m. on the appeal due date, as provided on the notice of decision.
 - 1. The petition for appeals to the City of Tempe shall contain:
 - a. The name of the applicant and the city case file number;
 - b. The name, address and signature of each petitioner; and
 - c. The specific grounds for appeal. The appeal shall be limited to the issue(s) raised in the petition.
 - 2. Appeals to Superior Court shall be filed per the standards of Superior Court.

B. Time Limitations.

Decision Making Body	Appeal Submittal Deadline	Appeal Body
Development Services Manager	14 Calendar Days	Applicable decision-making body
Zoning Administrator	14 Calendar Days	Hearing Officer
Hearing Officer	14 Calendar Days	Board of Adjustment
Board of Adjustment	30 Calendar Days	Maricopa County Superior Court
Planning and Zoning Commission	14 Calendar Days	City Council
Redevelopment Review Commission	14 Calendar Days	City Council
Design Review Board	14 Calendar Days	City Council
City Council	30 Calendar Days	Maricopa County Superior Court

- C. Failure to File an Appeal.** Failure to file an appeal with the Development Services Department or City Clerk as applicable, by 5:00 p.m. on the due date, shall render such appeal invalid.

CHAPTER 9 – TIME EXTENSION, REVOCATION, AND TRANSFER OF PERMITS/APPROVALS

Section 6-901 Time Extension.

- A. Timing of Extension.** If an extension is desired, the holder of the approval or permit must file an application for an extension no later than forty-five (45) days prior to expiration of the approval or permit.
- B. Procedure and Approval Criteria.** Extension requests shall be processed by the Development Services Manager as an administrative review decision. The Development Services Manager may refer the request to the original decision-making body that issued the original approval if different than the Development Services Manager. An extension may be granted for a maximum of one (1) year from the original date of expiration, and may be less than one (1) year if the Manager or the original decision-making body deems that a shorter timeframe is warranted. Extensions shall be granted only upon findings that:
1. The use or *development* could not reasonably commence for reasons beyond the control of the permit holder;
 2. The request for extension is not sought for purposes of avoiding the requirements or standards of this Code or the permit;
 3. There has been no change in city standards or other circumstances likely to necessitate significant modification of the *development* approval or conditions of approval; and
 4. The use of property, if any, conforms to applicable city codes. The city may deny an extension request if there is an existing Code violation, or impose conditions to facilitate compliance.

Section 6-902 Revocation of a Permit/Approval.

The city may revoke an approval or permit granted under this Code. In revoking an approval or permit, the following procedures apply:

- A. Procedure and Criteria.** Following reasonable notice to the permit/approval holder an administrative hearing shall be held to consider all relevant information, conditions, and concerns related to the permit. The permit/approval holder will be given a reasonable opportunity to resolve all related issues. If the permit/approval holder cannot comply with conditions of the permit/approval or otherwise remains in violation of this Code after thirty (30) days, or sooner when the violations constitute an immediate public health, safety and general welfare concern, the Zoning Administrator shall schedule the item on the next regularly scheduled agenda of the original decision-making body, as may be appropriate, at which time revocation of the permit/approval may be considered. A permit/approval may be revoked if it is determined that:

1. Development which has occurred does not comply with the standards set forth in this Code or any special conditions imposed upon the permit/approval;
 2. The permit/approval was approved based on materially incorrect or incomplete information; or
 3. A change has occurred to city regulations, the General Plan or applicable law, prior to the *development* obtaining a vested right or status as a legal nonconforming use that makes the approved *development* unlawful or not permitted.
- B. Revoke Permit/Approval.** The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.
- C. Option to Reapply for Permit/Approval.** The holder of the revoked permit/approval may reapply for a new permit/approval at any time as an entirely new application.

Section 6-903 Transfer of Permits/Approvals.

- A.** *Use permits* and approvals are transferable to successors in interest.